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REFUGEE EXTRACTIVISM: LAW AND THE MINING OF A HUMAN COMMODITY IN THE REPUBLIC OF NAURU

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In March 2013, Australia's Department of Immigration and Border Protection (DIBP) awarded the AU\$17.7 million contract for refugee claims assistance on the Republic of Nauru to Craddock Murray Neumann.¹ The Sydney-based firm became the organization engaged in providing legal representation to people confined to the small Pacific coral atoll. As part of the two-year contract, Craddock deployed legal taskforces of Claims Assistant Providers (CAPS) to the island, helping prepare asylum claims and represent asylum seekers held at Nauru's Regional Processing Centre (RPC). Based on extensive interviews and documentary evidence, DIBP Refugee Status Determination (RSD) Officers, overlooked by fledgling Nauruan trainees, then adjudicated the credibility of people's "fear of persecution" under the ambit of the Geneva Convention and Nauru's newly established Refugee Conventions Act (2012).² At the end of the screening, those certified as exhibiting "well-founded fear" received five-year residence permits for island resettlement. Asylum seekers unsuccessful in the elaborate appeal process were flown back to their countries of nationality or suitable alternatives.

Craddock supported the major legal and institutional changes taking place on Nauru. Under the 2001 Pacific Solution, Nauru agreed to house Australia's maritime asylum seekers in exchange for development aid packages and an economic sector for business and employment.³ The world's smallest island

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1. AUSTENDER, <https://www.tenders.gov.au/Cn/Show/77a12f73-a856-1841-6ae5-723c73a7e9d5> [<https://perma.cc/G3EK-94DM>] (last visited Aug. 30, 2019) (AusTender is the online government portal where government contracts are available for bidding and published, unless operating under closed tender).

2. Refugee Conventions Act, 2012 (Act. No. 12/2012) (Nauru), http://www.naurugov.nr/media/33059/refugees_convention_act_2012.pdf.

3. Janet Phillips, *The 'Pacific Solution' Revisited: a Statistical Guide to the Asylum Seeker Caseloads on Nauru and Manus Island*, PARLIAMENT OF AUSTRALIA: DEPT OF PARLIAMENTARY

nation, at just twenty-one km², Nauru permitted—and indeed required—extensive international and Australian intervention in order to develop and administer its refugee processing operations.

Prior to 2001, Nauru had no refugee processing or resettlement system in place.⁴ The country had not signed the Refugee Convention and had no national asylum procedures. Many in the government and public I spoke with during my fieldwork were unfamiliar with what refugee resettlement entailed. However, following 2001 and 2012 agreements, the bankrupt island nation, once wealthy from phosphate, regained its economic footing from refugee wealth, agreeing to house Australia's maritime asylum-seeking populations for an economic development growth sector.

Anyone who makes their way by boat, usually from Indonesia or Sri Lanka, and claims to be a refugee in Australian territorial, now excised, waters is sent to Nauru or Papua New Guinea (PNG) for refugee processing and resettlement. The majority are originally coming from a range of countries, including: Iran, Iraq, Afghanistan, Pakistan, and Vietnam. If certified as refugees by seconded Australian Immigration Department personnel, asylum seekers are given refugee visas for indefinite stays in Nauru.

Histrionic debates about national security and border control, coupled with a deep history of selective nation building, constitute some of the political currency of Nauru's refugees for Australia.⁵ Across the course of Australia's settler state history, selectively controlling migration and "stopping the boats" have emerged as quintessential parts of Australian political debates and campaigns.⁶ In Australia, as elsewhere, anti-refugee discourse of risk, "economic migrancy," and "welfare scrounging" have swept the Antipodes.⁷ With the political potency of these sorts of moral panics,⁸ centered on threat narratives of refugee invasions and/or economic dependency,⁹ asylum seekers

SERVS., 2 (2012), https://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/pubs/bn/2012-2013/pacificsolution [<https://perma.cc/3WL9-EJUT>].

4. Julia Morris, *Violence and Extraction of a Human Commodity: From Phosphate to Refugees in the Republic of Nauru*, 6 *EXTRACTIVE INDUS. & SOC'Y* 1122, 1125–26 (2019).

5. PAUL KELLY, *TRIUMPH AND DEMISE: THE BROKEN PROMISE OF A LABOR GENERATION* 320 (Sally Moss ed., 2014); DAVID MARR & MARIAN WILKINSON, *DARK VICTORY* 30 (2003).

6. CATHERINE DAUVERGNE, *THE NEW POLITICS OF IMMIGRATION AND THE END OF SETTLER SOCIETIES* 56 (2016).

7. Sharon Pickering, *The New Criminals: Refugees and Asylum Seekers*, in *THE CRITICAL CRIMINOLOGY COMPANION* 169, 171 (Thalia Anthony & Chris Cunneen eds., 2008).

8. STANLEY COHEN, *FOLK DEVILS AND MORAL PANICS: THE CREATION OF THE MODS AND ROCKERS* 9, 191 (1980).

9. Leo R. Chavez, *"Illegality" Across Generations: Public Discourse and the Children of Undocumented Immigrants*, in *CONSTRUCTING IMMIGRANT "ILLEGALITY": CRITIQUES, EXPERIENCES, AND RESPONSES* 84, 89 (Cecilia Menjivar & Daniel Kanstroom eds., 2014); Ivan Leudar et al., *Hostility Themes in Media, Community and Refugee Narratives*, 19 *DISCOURSE & SOC'Y* 187, 188 (2008).

are increasingly subjected to a variety of invasive governance technologies.¹⁰ This includes border frontiering projects and extreme forms of policing and incarceration in far-flung or extra-territorialized sites.¹¹

Because of the political currency afforded by asylum seeker issues, “boat people,” and national security, Australian governments have pursued successively hard-lined border protection strategies as a policy priority. In 2001, Nauru and PNG entered into agreements with the Howard Liberal Coalition following a highly successful re-election campaign, which generated the now legendary statement, “we will decide who comes to this country and the circumstances in which they come.”¹² The two virtually bankrupted states consented to house Australia’s maritime arrivals in exchange for development aid packages and an economic sector for local business and employment opportunities.¹³

This Article looks more particularly at the legal architecture that coalesces around Nauru through the lens of resource extraction—or what I term “refugee extractivism.”¹⁴ I draw on ethnographic research carried out in Geneva, Australia, Fiji, and Nauru between 2015 and 2016 into the global refugee industry. This ethnographic material pushes me to think through a theoretical framework that was so stark during my time in Nauru: the extractive practice that coalesces around asylum seekers and refugees as resources. Extractivism is a mode of accumulation that involves moving large quantities of natural resources, primarily for export.¹⁵ Extractivism has long been entangled in colonial and postcolonial plunder, in which the exploitation of raw materials has been essential for the industrial development—and quite often prosperity—of the global north. The dramatic refugee industry that envelops Nauru speaks to the extractive regimes that govern human mobility.¹⁶

10. Nicholas De Genova, *Spectacles of Migrant ‘Illegality’: The Scene of Exclusion, The Obscene of Inclusion*, 36 ETHNIC & RACIAL STUD. 1180, 1183, 1186–87 (2013).

11. Jennifer Hyndman & Alison Mountz, *Another Brick in the Wall? Neo-Refoulement and the Externalization of Asylum by Australia and Europe*, 43 GOV’T & OPPOSITION 249, 255, 258, 267 (2008).

12. John Howard, Former Prime Minister of Austl., Liberal/Nat’l Coal. Election Speech at Sydney, Austl. (Oct. 28, 2001).

13. Morris, *supra* note 4, 1126.

14. Julia Morris, *Extractive Landscapes: The Case of the Jordan Refugee Compact*, REFUGE: CANADA’S J. ON REFUGEES 37/2 (2020).

15. MACARENA GÓMEZ-BARRIS, *THE EXTRACTIVE ZONE: SOCIAL ECOLOGIES AND DECOLONIAL PERSPECTIVES* xvii–xviii (2017); Chris Ballard & Glenn Banks, *Resource Wars: The Anthropology of Mining*, 32 ANN. REV. ANTHROPOLOGY 287, 294–95 (2003).

16. Alexander Betts, *The Migration Industry in Global Migration Governance*, in *THE MIGRATION INDUSTRY AND THE COMMERCIALIZATION OF INTERNATIONAL MIGRATION* 45, 57–58 (Thomas Gammeltoft-Hansen & Ninna Nyberg Sørensen, eds., 2013); Georg Menz, *The Neoliberalized State and the Growth of the Migration Industry*, in *THE MIGRATION INDUSTRY AND THE COMMERCIALIZATION OF INTERNATIONAL MIGRATION*, 108, 121–122 (Thomas Gammeltoft-

I have argued elsewhere “that the industry that envelops Nauru calls attention to the forms of violence that are so often associated with the extraction of resources.”¹⁷ Here, I hone in on the legal procedures that operate throughout the asylum process in Nauru. I argue that refugee law is a central part of the violent extraction of people who move, even—and, perhaps, especially—as it is represented in benevolent terms. Law was, of course, essential in establishing systems of order for colonialism under the guise of development and humanitarianism.¹⁸ Within mining and other resource extractive contexts, laws and regulations have also been utilized by local, state, and federal governments to further extractive practices with the goal of capital accumulation.¹⁹ In her study of the Peruvian mining industry, Fabiana Li²⁰ shows how corporations utilize the rhetoric of environmentalism to further their own profits.²¹ This view is relevant to understanding how, despite its positivist associations, refugee law is also a hugely extractive practice. This resource extractive practice entails requiring people to recount intimate experiences and narratives of trauma in order to move elsewhere, while profiting a vast industry of corporate, non-governmental, government, and other actors.

Certainly, the international refugee regime has brought millions of people a form of important international protection. However, as Simon Behrman²² makes clear, refugee legal systems are also implicated as forms of border enforcement, looking to distil the “deserving” from “undeserving” migrant, but under the banner of humanitarianism.²³ A resource extractive framework enables us to see quite clearly how refugee legal and humanitarian practitioners can extract moral feel-good (and often economic) value from people who move. From this perspective, refugee work holds definite moral appeal, making many feel as if they are bettering people’s lives. This is in addition to the political economic capital obtained by governments where refugees ping-pong between shining examples of state benevolence or scapegoat figures that explain low state

Hansen & Ninna Nyberg Sørensen, eds., 2013); Ishan Ashutosh & Alison Mountz, *Migration Management for the Benefit of Whom? Interrogating the Work of the International Organization for Migration*, CITIZENSHIP STUD. 21, 31, 33, 34 (2011); Alexander Betts, *The Refugee Regime Complex*, 29 REFUGEE SURV. Q. 12, 12–13 (2010); B.S. Chimni, *The Birth of a ‘Discipline’: From Refugee to Forced Migration Studies*, 22 J. REFUGEE STUD. 11, 11, 19 (2009).

17. Morris, *supra* note 4, at 1124.

18. ANTONY ANGHIE, IMPERIALISM, SOVEREIGNTY, AND THE MAKING OF INTERNATIONAL LAW 69 (2004).

19. DAVID HARVEY, JUSTICE, NATURE AND THE GEOGRAPHY OF DIFFERENCE 142–43 (1996).

20. FABIANA LI, UNEARTHING CONFLICT: CORPORATE MINING, ACTIVISM, AND EXPERTISE IN PERU 4 (2015).

21. *Id.* at 69–70.

22. Simon Behrman, *Refugee Law as a Means of Control*, 32 J. OF REFUGEE STUD. 42, 42–62 (2019).

23. *Id.*

employment and societal unrest, preying on deep-rooted fears surrounding the dilution of national identity.²⁴ Yet, in conflicts such as the offshoring of refugees, activists rely on international refugee law to make serious claims about the legitimacy of Nauru. Forcibly processing and resettling people in Nauru is certainly a horrific practice. However, these discourses further benefit organizations who often have teams of trained individuals at their disposal to carry out the work required in offshoring asylum seekers to places like Nauru in the first place.²⁵

Looking at migration control through the lens of resource extraction also helps us to see colonial pathways that make some countries more susceptible to hazardous border outsourcing projects than others.²⁶ Within extractive regimes, there remain enduring legacies of exploitation and empire-building.²⁷ Countries with postcolonial ties around forms of extraction have all-too-frequently found themselves tied into patterns of imperial dependency, becoming financially induced into new border enforcement industries.²⁸ These dynamics are important to consider as many governments have looked to the Australian-style practice of turning back boats and offshoring asylum and resettlement operations, reinvigorating colonial pathways.²⁹ In an age of refugee demonization, Australia's asylum models have been mooted as "solutions" for European countries facing an influx of migrants.³⁰ Proposals for establishing offshore processing camps in countries neighboring the EU have spanned

24. Andrea Lawlor & Erin Tolley, *Deciding Who's Legitimate: News Media Framing of Immigrants and Refugees*, 11 INT'L J. OF COMM. 967, 985 (2017); GIL LOESCHER & JOHN A. SCANLAN, *CALCULATED KINDNESS: REFUGEES AND AMERICA'S HALF-OPEN DOOR 1945-PRESENT* 209-18 (1986).

25. Morris, *supra* note 4, at 1124.

26. Julia Morris, *Colonial Afterlives of Infrastructure: From Phosphate to Refugee Processing in the Republic of Nauru*, MOBILITIES SPECIAL ISSUE: INFRASTRUCTURES OF INJUSTICE – MIGRATION & BORDER MOBILITIES, April 26, 2019 at 3.

27. PADRAIG RISTEARD CARMODY, *THE NEW SCRAMBLE FOR AFRICA*, 223 (2011); Julia Morris, *Colonial Afterlives of Infrastructure: From Phosphate to Refugee Processing in the Republic of Nauru*, MOBILITIES SPECIAL ISSUE: INFRASTRUCTURES OF INJUSTICE – MIGRATION & BORDER MOBILITIES, April 26, 2019 at 3.

28. See Juanita Sundberg, *The State of Exception and the Imperial Way of Life in the United States—Mexico Borderlands*, 33 ENV'T & PLANNING D: SOC. & SPACE 209, 209–228 (2015) (on the US-Mexico borderlands); Nick Buxton & Mark Akkerman, *The Rise of Border Imperialism*, ROAR MAGAZINE, 2018, at 3 (on European border imperialism).

29. The offshoring of detention has its own antecedents in the US Caribbean including the operation of places like Guantanamo. See JENNA M. LOYD & ALISON MOUNTZ, *BOATS, BORDERS, AND BASES: RACE, THE COLD WAR, AND THE RISE OF MIGRATION DETENTION IN THE UNITED STATES* (2018).

30. Daniel Ghezelbash, *Why Europe Shouldn't Follow Australia's Lead on Asylum Seekers*, THE CONVERSATION (Aug. 27, 2019).

locations such as Albania, Ukraine, Morocco, and further afield to Northern and Central Africa.³¹

There is no doubt that in the case of Nauru the forms of social destruction far outweigh the financial benefits.³² This is compounded by the reality that most of the value of offshoring the refugee system to Nauru is not for locals—and most definitely not for refugees. Instead, the value of offshoring is for Australians as part of a border spectacle and imagined feelings of maritime security. For both countries, these forms of extraction lie entangled in colonial histories and global capital. Once, the global economy benefited tremendously from Nauru's high-grade phosphate, utilized to heighten agricultural yields and food production, largely in the global north.³³ Nauruans—like other surrounding phosphate islanders³⁴—saw little of these profits, receiving a fraction of the overall price obtained on the global market.³⁵ Now, the spectacle of migrant “illegality” generates a multitude of images and discursive formations that fuel anti-immigrant sentiments for political and organizational profit.³⁶ The figure of Australia as the island continent is embedded in unresolved anxieties of a still-colonial nation founded on the usurpation of Indigenous land and sovereignty.³⁷ For Nauru, the country's receptivity to offshoring is also wrapped into a history around colonial export economies and a resultant economic dependency.³⁸ Across the centuries, Nauru has been subject to capitalist rearrangements in order to give power to Australia's economy, even as the transformation of trade systems from phosphate to refugees engenders collective violence.

As other scholars dealing with the interplay between economy and environment have shown, maintaining or gaining jobs often takes precedence over the sometimes invisible effects of environmental pollution.³⁹ Meanwhile,

31. MATTHEW CARR, *FORTRESS EUROPE: DISPATCHES FROM A GATED CONTINENT* (2016).

32. Morris, *supra* note 4, at 1129.

33. MASLYN WILLIAMS & BARRIE MACDONALD, *THE PHOSPHATERS A HISTORY OF THE BRITISH PHOSPHATE COMMISSIONERS AND THE CHRISTMAS ISLAND PHOSPHATE COMMISSIONERS* (1985).

34. Katerina Teiawa, *Ruining Pacific Islands: Australia's Phosphate Imperialism*, 46 AUSTRALIAN HIST. STUD. 274, 391 (2015).

35. NANCY VIVIANI, NAURU: PHOSPHATE AND POLITICAL PROGRESS 35 (1970).

36. Nicholas De Genova, *Spectacles of Migrant 'Illegality': The Scene of Exclusion, The Obscene of Inclusion*, 36 J. OF ETHNIC & RACIAL STUD. 1180, 1181 (2013).

37. SUVENDRINI PERERA, AUSTRALIA AND THE INSULAR IMAGINATION: BEACHES, BORDERS, BOATS, AND BODIES (2009).

38. Julia Morris, *Colonial Afterlives of Infrastructure: From Phosphate to Refugee Processing in the Republic of Nauru*, MOBILITIES SPECIAL ISSUE: INFRASTRUCTURES OF INJUSTICE – MIGRATION & BORDER MOBILITIES, April 26, 2019 at 3.

39. Kenneth A. Gould, *Pollution and Perception: Social Visibility and Local Environmental Mobilization*, 16 QUALITATIVE SOC. 157, 157–78 (1993); Josiah Heyman, *In the Shadow of the Smokestacks: Labor and Environmental Conflict in a Company-Dominated Town*, in ARTICULATING HIDDEN HISTORIES: EXPLORING THE INFLUENCE OF ERIC R. WOLF 156, 163 (Jane Schnieder & Rayna Rapp eds., 1995); June Nash & Max Kirsch, *The Discourse of Medical Science*

mining and resource extraction in many areas across the world have created and/or exacerbated social, political, economic, and environmental problems in local communities. Nauru is no different, marred with social conflicts between some refugees and locals, triggered by the problems induced by Australia's offshoring project.⁴⁰ Not least, the country has become the target of a tremendous activist scene, with discourses levelled of savagery and underdevelopment, which obscures the shared conditions of exploitation experienced by refugees and locals.⁴¹

This Article proceeds as follows. I start by detailing the concept of refugee extractivism through the lens of scholarship on resource extraction and critical migration studies. I move into discussing how the law plays an important part in solidifying Nauru's landscapes of accumulation, in particular around indigenizing projects between sovereign nations. I then look at how forms of refugee extractivism operate in Nauru when it comes to refugee status determination, tracking some of the on-the-ground realities of refugee status determination processes on asylum seeker's lives. Here, I draw on conversations with asylum seekers and refugees as to their experiences in undergoing asylum adjudication, to emphasize the extractive effects of this human metallurgical process, in which objectification and re-traumatization is central. I close by reflecting on the activism associated with the industry, showing how organizers often rely on legal and civilizational discourses in order to make claims about Nauru's legitimacy. This is deeply ironic as an evangelical belief in refugee protection is also part of the Nauruan government's *raison d'être* for developing their asylum system. I suggest that these convergences are related to a hegemonic economic structure that emphasizes refugee law as a means of progress and development.

REFUGEE EXTRACTIVISM

Anthropologists have only more recently come to study the politics and social economies of resource extraction, empirically investigating the distinct kinds of violence, conflict, and insecurity that are commonly associated with

in the Construction of Consensus between Corporation and Community, 2 MED. ANTHROPOLOGY Q. 158, 169 (1988); Cynthia Werner, *Patriotism, Profits, and Waste: The Moral Dimensions of Low-Level Radioactive Waste Disposal in Texas*, in ECONOMICS AND MORALITY: ANTHROPOLOGICAL APPROACHES 143–66 (Katherine E. Browne & B. Lynne Milgram eds., 2009).

40. Morris, *supra* note 4, at 1129.

41. *Id.* at 4.

mining for oil and minerals,⁴² lumber,⁴³ or other major global commodities.⁴⁴ When looking at forms of human commodities, research has examined the production and sale of body parts,⁴⁵ the prisoner,⁴⁶ and the slave as commodity.⁴⁷ But missing here is an empirical understanding of new forms of human commodities and especially, in the current era, refugees as commodities.⁴⁸ As scholars have noted, resource extraction can take non-human and human forms.⁴⁹ Capitalists and colonialists looking to access natural resources were also able to access human resources in the form of cheap labor.⁵⁰ This was partially accomplished by the creation of a rush for resources, which demands a spectacle that grabs investors' imaginations.⁵¹

When it comes to the institutional "refugee rush," particular global western hotspots, such as the Mediterranean, the US-Mexico border, and Australian maritime borders, are now dramatically legible in terms of a crisis.⁵² These hot spots have been constructed as crises epicentres, despite the on-the-ground realities that more people are displaced in other regions. For example, more people sought refuge from South Sudan to Uganda in 2016 than crossed the Mediterranean.⁵³ But as the limelight descends on particular refugee crisis hotspots, there has been a veritable boom in forms of refugee humanitarianism,

42. JUNE NASH, *WE EAT THE MINES AND THE MINES EAT US: DEPENDENCY AND EXPLOITATION IN BOLIVIAN TIN MINES* 1-2 (1979); MICHAEL WATTS, *PETRO-VIOLENCE: COMMUNITY, EXTRACTION, AND POLITICAL ECOLOGY OF A MYTHIC COMMODITY*, *VIOLENT ENVIRONMENTS* 189, 192-93 (2001).

43. Michelle Dyer, *Eating Money: Narratives of Equality of Customary Land in the Context of Natural Resource Extraction in the Solomon Islands*, 28 *THE AUSTRALIAN J. OF ANTHROPOLOGY* 88, 89 (2017) (discussing a hostile logging environment).

44. PAIGE WEST, *DISPOSSESSION AND THE ENVIRONMENT: RHETORIC AND INEQUALITY IN PAPUA NEW GUINEA* 21 (2016).

45. NANCY SCHEPER-HUGHES, *COMMODIFYING BODIES: COMMODITY FETISHISM IN ORGANS TRAFFICKING* 35 (2002).

46. ANGELA DAVIS, *ARE PRISONS OBSOLETE?* 25 (2003).

47. Igor Kopytoff, *The Cultural Biography of Things: Commoditization as Process*, *THE SOCIAL LIFE OF THINGS: COMMODITIES IN CULTURAL PERSPECTIVE* 64, 65 (1986).

48. Morris, *supra* note 4, at 1129.

49. ANNA TSING, *THE MUSHROOM AT THE END OF THE WORLD: ON THE POSSIBILITY OF LIFE IN CAPITALIST RUINS* 121, 121-24 (2015).

50. DANIEL E. BENDER, ET AL., *MAKING THE EMPIRE WORK: LABOR AND UNITED STATES IMPERIALISM* 9 (2015).

51. Tania Murray Li, *What is Land? Assembling a Resource for Global Investment*, 39 *TRANSACTIONS OF THE INST. OF BRITISH GEOGRAPHERS* 589, 590 (2014) (discussing land rushes).

52. Heath Cabot, *Crisis, Hot Spots, and Paper Pushers: A Reflection on Asylum in Greece*, *FIELDSIGHTS* (June 28, 2016), <https://culanth.org/fieldsights/crisis-hot-spots-and-paper-pushers-a-reflection-on-asylum-in-greece> [<https://perma.cc/FX2S-9R9J>].

53. *Regional Overview of the South Sudanese Refugee Population*, UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (2019), <https://data2.unhcr.org/en/situations/southsudan> [<https://perma.cc/7SB3-M5MV>].

which carries enormously profitable opportunities. Recent years have seen legal tribunals and consultants, healthcare professionals, social workers, humanitarian institutes, research institutes, and academics specifically coalescing around refugee issues.⁵⁴ Some determine if individuals are refugees or help present them as such; others contractually care for asylum seekers and refugees; still more return rejected asylum seekers to their point of origin from camps, processing centers, prisons and other localities around the globe.⁵⁵ Scholars from the environmental anthropology call this a “resource rush,” as placed within a colonial history of land rushes, gold rushes, and crop booms.⁵⁶ “The characteristic feature of a rush,” writes Tania Murray Li, “is a sudden, hyped interest in a resource because of its newly enhanced value, and the spectacular riches it promises to investors who get into the business early.”⁵⁷ This “spectacle of hidden treasures and huge finds,”⁵⁸ what Anna Tsing calls the “economy of appearances,”⁵⁹ can often overlook on-the-ground realities in an effort to attract investors.⁶⁰

This is just as much the case when it comes to refugees. From a budget of USD\$300,000 and thirty-four staff members in 1950, the United Nations High Commissioner for Refugees (UNHCR) is now a bureaucratic leviathan of more than 9,300 staff worldwide and an annual budget of over USD\$7 billion, with IKEA its partner in Better Shelter refugee flat-pack construction, and Angelina Jolie its Special Envoy for Refugee Issues.⁶¹ The year 2016 was declared “The

54. Morris, *supra* note 4, at 1129.

55. THOMAS GAMMELTOFT-HANSEN & NINNA NYBERG SØRENSEN, *THE MIGRATION INDUSTRY AND THE COMMERCIALIZATION OF INTERNATIONAL MIGRATION* 1–2 (Routledge, 2013); DOMINIQUE MORAN, *CARCERAL SPACES: MOBILITY AND AGENCY IN IMPRISONMENT AND MIGRANT DETENTION* 2 (2013); AIHWA ONG, *BUDDHA IS HIDING: REFUGEES, CITIZENSHIP, THE NEW AMERICA* 215 (2003).

56. Liz Alden Wily, *Looking Back to See Forward: The Legal Niceties of Land Theft in Land Rushes*, 39 J. OF PEASANT STUD. 751, 751–70 (2012) (discussing land rushes); DEREK HALL ET AL., *POWERS OF EXCLUSION: LAND DILEMMAS IN SOUTHEAST ASIA* 87 (2011).

57. Tania Murray Li, *What is Land? Assembling a Resource for Global Investment*, 39 TRANSACTIONS OF THE INST. OF BRITISH GEOGRAPHERS 589, 59 (2014) (discussing land rushes).

58. *Id.*

59. Anna Tsing, *Inside The Economy of Appearances*, 12 PUB. CULTURE 115, 118 (2000) (discussing what attracts companies to invest).

60. *Id.*

61. HISTORY OF THE UN REFUGEE AGENCY, <http://www.unhcr.org/en-us/history-of-unhcr.html> [https://perma.cc/MUQ2-X4PT] (last visited Aug. 16, 2019); IKEA FOUNDATION: THE UN REFUGEE AGENCY, <https://www.unhcr.org/en-us/ikea-foundation.html> [https://perma.cc/YVZ7-D9PG] (last visited Dec. 13, 2019); SPECIAL ENVOY ANGELINA JOLIE, THE UN REFUGEE AGENCY, <https://www.unhcr.org/en-us/special-envoy-angelina-jolie.html> [https://perma.cc/3EX6-EXXT] (last visited Dec. 13, 2019).

Year of the Refugee.”⁶² Refugee studies centers, programs, and policy institutes proliferate from Oxford to Toronto, Bangalore to Cairo, Sydney to Dar-es-Salaam, and beyond, while global #RefugeesWelcome movements lobby around a morally irrefutable imaginary of “first world” magnanimity.⁶³ The image of the refugee has also become a kind of victim-commodity, providing news value, political point-scoring, and a human embodiment of “third world” disaster and western civilizational benevolence.

UNHCR has been remarkably successful at shaping collective knowledge about human movement, acting “as a ‘teacher’ of refugee norms” through persuasion and socialization.⁶⁴ But in a climate of public disinterest, UNHCR has become ever-more concerned with their own global relevance and institutional capital, brokering refugee trade relations between countries as part of a regional cooperative framework⁶⁵ or RCF.⁶⁶ Refugee law does not operate as a constraint to third country arrangements as some scholars have argued.⁶⁷ Rather, it is partially through UNHCR’s system of RCF that Nauru is made an international legal possibility. Under this system, countries are encouraged to work together around what is problematically termed “burden sharing.”⁶⁸ On the one hand, UNHCR’s RCF system contributed to the architecture of Nauru. On the other, the solidification of refugees into a global industry—and refugees as objectified moral commodities—allows for such outsourced third-country systems to take place. Just as scholars have noted in other extractive contexts,⁶⁹

62. Robert L McKenzie, *The Year of The Refugee: It's Gut-check Time for President Obama*, BROOKINGS (Sept. 19, 2016), <https://www.brookings.edu/blog/order-from-chaos/2016/09/19/the-year-of-the-refugee-its-gut-check-time-for-president-obama/> [https://perma.cc/B52Z-2ESH].

63. Liisa Malkki, *Refugees and Exile: From 'Refugee Studies' to the National Order of Things*, 24 ANN. REV. OF ANTHROPOLOGY 495, 495–523 (1995).

64. GIL LOESCHER & JAMES MILNER, GLOBAL MIGRATION GOVERNANCE 189, 194 (2011).

65. RANDALL HANDSEN ET AL MIGRATION, NATION STATES, AND INTERNATIONAL COOPERATION 20–21 (2011).

66. The idea of RCF carries a long organizational pedigree. Previous incarnations of UNHCR, including the Nansen Office and Intergovernmental Committee on Refugees (ICGR), but particularly the International Refugee Organization (IRO), found great financial success and institutional growth from moving thousands of refugees around the state system, and to hitherto new geographical contexts. IRO, with its specialized staff and fleet of more than forty ships, relocated more than one million refugees between 1947 and 1951 from Europe to Paraguay and beyond. JOHN HOPE SIMPSON, THE REFUGEE PROBLEM 192–93 (1939); JAMES C. HATHAWAY, THE RIGHTS OF REFUGEES UNDER INTERNATIONAL LAW 91 (2005).

67. THOMAS GAMMELTOFT-HANSEN, THE EXTERNALISATION OF EUROPEAN MIGRATION CONTROL AND THE REACH OF INTERNATIONAL REFUGEE LAW, 284–98 (2012).

68. MIGRATION, NATION STATES, AND INTERNATIONAL COOPERATION (2011); Christina Boswell, *Burden-Sharing in the New Age of Immigration*, THE ONLINE JOURNAL OF THE MIGRATION POLICY INSTITUTE, Nov. 1, 2003.

69. Hannah Appel, *Offshore Work: Oil, Modularity, and the How of Capitalism in Equatorial Guinea*, 39 J. AM. ETHNOLOGICAL SOC. 692, 692–709 (2012).

institutionalized legal structures and mobile labor regimes enable industry projects to pop into visibility in offshore and out-of-the-way locations.⁷⁰

When considering refugees through the framework of resource extraction, I prioritize, first-and-foremost, the impact of this system on people's lives. Research has shown how mining and resource extraction in many areas across the world have created, and often exacerbated, social, political, economic, and environmental problems in local communities.⁷¹ Resource extraction and mining in rural areas is often done at the economic and environmental expense of local people. A focus on refugees presents conditions unusual in industrial extractions as one revolved around a human commodity: in Nauru, an operation that comes at the expense of refugees, locals, and many offshore industry workers.⁷² In this industry, people are required to present themselves through legal narratives of trauma: what I show in this paper to be a form of "intimate extraction." Here, I draw on important work from critical migration studies, which shows the impact of prisons, immigration detention centers, and places of incarceration on the mental health of those held in and working in the system.⁷³ Nightmarish experiences, I have shown elsewhere,⁷⁴ are felt by those across Nauru's offshore refugee industry, including for refugees, locals, and workforces alike. In this Article I argue that the law is a central park of this regime, in particular the process of refugee status determination or RSD.⁷⁵ Exposing the realities of a morally upheld legal system through the framework of resource extraction renders its consequential realities available for critical reflection.

I find many previous limitations in seeing the harmful impacts of the refugee system as related to the conceptual framing of "humanitarianism" or "human rights." This framework can obscure the industrial complex of refugee/non-refugee, state/non-state actors involved in working with and/or promoting

70. James Ferguson, *Seeing Like an Oil Company: Space, Security, and Global Capital in Neoliberal Africa*, 107 J. AM. ETHNOLOGIST 377 (2005).

71. JERRY K. JACKA, *ALCHEMY IN THE RAIN FOREST: POLITICS, ECOLOGY, AND RESILIENCE IN A NEW GUINEA MINING AREA* (2015); STUART KIRSCH, *MINING CAPITALISM: THE RELATIONSHIP BETWEEN CORPORATIONS AND THEIR CRITICS* 11–13 (2014); FABIANA LI, *UNEARTHING CONFLICT: CORPORATE MINING, ACTIVISM, AND EXPERTISE IN PERU* 3 (2015); JUNE NASH, *WE EAT THE MINES AND THE MINES EAT US: DEPENDENCY AND EXPLOITATION IN BOLIVIAN TIN MINES* 1 (1993); MICHAEL TAUSSIG, *THE DEVIL AND COMMODITY FETISHISM IN SOUTH AMERICA* 143–44 (1980).

72. Morris, *supra* note 4, at 1123.

73. NICK GILL, *HEATH AND INTIMACIES IN IMMIGRATION DETENTION*, in *INTIMATE ECONOMIES OF IMMIGRATION DETENTION* 180 (2017); NICK GILL ET AL., *CARCERAL SPACES: MOBILITY AND AGENCY IN IMPRISONMENT AND MIGRANT DETENTION* 241 (2013).

74. Morris, *supra* note 4, at 1130.

75. Simon Behrman, *Refugee Law as a Means of Control*, 32 J. REFUGEE STUD. 42, 48 (2019).

refugees.⁷⁶ Similarly, legal scholarship in the human rights world can also become trapped in the “iron cage of legal instrumentalism.”⁷⁷ Using these framings can become trapped in questions of agency and affectivities, segueing from commercial and value-driven dynamics of how and why refugees have been constructed and targeted as commodities for organizational intervention. As Liisa Malkki well observes, there is a thematic tendency for much sociological work to play into the analytical schemata of representing “refugees” as a given.⁷⁸ Refugee status is constituted as a recognizable, generalizable, psychological condition, rather than considering how “refugeeness” is socially constructed and managed by powerful forces of discourse and consequent policy.⁷⁹ Resources, writes geographer Gavin Bridge, have no essential or intrinsic quality, but are placed in a cultural category because they are “considered to be useful or valuable in some way.”⁸⁰ In reality, a resource has to be assembled or “made up,”⁸¹ much like a social or legal categorization.⁸² “Thought of this way, what we call a resource . . . is a provisional assemblage of heterogeneous elements including material substances, technologies, discourses[.]”⁸³ and socio-legal practices.⁸⁴

This Article brings together these perspectives on resource extraction, critical migration, and carceral studies, contributing to an understanding of refugees as commodities, subjected to a panoply of extractive technologies, many socio-legal in nature. The new scramble for human commodities should be viewed as part of older persistent cycles of capital investment and mineral

76. Miriam Ticktin, *Transnational Humanitarianism*, 43 ANN. REV. ANTHROPOLOGY 273, 279 (2014).

77. Annelise Riles, *Anthropology, Human Rights, and Legal Knowledge: Culture in the Iron Cage*, 108 AM. ANTHROPOLOGIST 52, 60 (2006).

78. Liisa Malkki, *Refugees and Exile: From “Refugee Studies” to the National Order of Things*, 24 ANN. REV. OF ANTHROPOLOGY 495, 498 (1995).

79. *Id.* at 510.

80. Gavin Bridge, *Material Worlds: Natural Resources, Resource Geography and the Material Economy*, 3 GEOGRAPHY COMPASS 1219 (2009).

81. Ian Hacking, *Making Up People*, in RECONSTRUCTING INDIVIDUALISM: AUTONOMY, INDIVIDUALITY, AND THE SELF IN WESTERN THOUGHT 222, 236 (Thomas C. Heller et al. eds., 1986).

82. *Id.*

83. Tania Murray Li, *What is Land? Assembling a Resource for Global Investment*, 39 TRANSACTIONS OF THE INST. OF BRITISH GEOGRAPHERS 39, 589 (2014).

84. Ben Anderson & Colin McFarlane, *Assemblage and Geography*, 43 AREA 124, 124–25 (2011); Karen Bakker & Gavin Bridge, *Material Worlds? Resource Geographies and The ‘Matter of Nature’*, 30 PROGRESS IN HUM. GEOGRAPHY 5, 8 (2006); Michel Callon, *Some Elements of a Sociology of Translation: Domestication of The Scallops and The Fishermen of St Brieuc Bay*, 32 THE SOC. REV. 196, 198 (1984); MICHEL FOUCAULT, POWER/KNOWLEDGE: SELECTED INTERVIEWS & OTHER WRITINGS 15–16, 39 (Colin Gordon et al. eds., 1980).

extraction by “developed nations” since early colonial exploration.⁸⁵ Humans are part of the social, ecological, and political-economic dynamics of mineral extraction expanding into ever-growing resource frontiers globally in the new millennium.⁸⁶ The framework of resource extraction enables us to clearly see not only the financial value, but also the moral value, that is extracted from people’s bodies by a spectrum of industry actors. As others show,⁸⁷ ideologies and legal systems that are presented as inherently good and acquire cultural sense, manifested in norms, structures, and routines, are also imbricated within systems of power and domination within a context of market fundamentalism.⁸⁸

AN EXTRACTIVE MICROCOSM

Nauru, the object of my ethnographic research, is effectively a company-town country, governed around different forms of whole-scale resource extraction from the mid-nineteenth century.⁸⁹ After a brief period of German colonial rule in line with coconut exportation (1886–1919), the country was colonially restructured in line with phosphate extraction under a tripartite British, Australian, and New Zealand administration as a League of Nations mandated (later United Nations Civilizational Trust) territory, and essentially Australian-led British Phosphate Commission control (1919–1968).⁹⁰ Until independence in 1968, Nauru underwent an extractivist agenda from colonial rule aimed at propping up the Australian economy. Nauru’s phosphate enriched

85. MACARENA GOMEZ-BARRIS, *THE EXTRACTIVE ZONE: SOCIAL ECOLOGIES AND DECOLONIAL PERSPECTIVES* 7 (2017).

86. James Ferguson, *Seeing Like an Oil Company: Space, Security and Global Capital in Neoliberal Africa*, 107 *AM. ANTHROPOLOGIST* 377, 378 (2005); MICHAEL J. SANDEL, *WHAT MONEY CAN’T BUY: THE MORAL LIMITS OF MARKETS* 67 (2012); ANNA TSING, *FRICTION: AN ETHNOGRAPHY OF GLOBAL CONNECTIONS* 1, 28–29 (2005); Emma Wilson, *New Frontiers for the Oil and Gas Industry: Company-Community Relations on Sakhalin Island*, 26 *THE CAMBRIDGE J. OF ANTHROPOLOGY* 13, 13–14 (2006).

87. YVES DEZALAY & BRYANT G. GARTH, *DEALING IN VIRTUE: INTERNATIONAL COMMERCIAL ARBITRATION AND THE CONSTRUCTION OF A TRANSNATIONAL LEGAL ORDER* 197 (1996); LAURA NADER, *HARMONY IDEOLOGY: JUSTICE AND CONTROL IN A ZAPOTEC MOUNTAIN VILLAGE* xvii, 309–11 (1990); Miriam Ticktin, *Where Ethics and Politics Meet: The Violence of Humanitarianism in France*, 33 *AM. ETHNOLOGIST* 33, 33 (2006).

88. John L. Comaroff & Jean Comaroff, *Law and Disorder in the Postcolony: An Introduction*, in *LAW AND DISORDER IN THE POSTCOLONY* 2, 4–5 (2006).

89. MASLYN WILLIAMS & BARRIE MACDONALD, *THE PHOSPHATEERS: A HISTORY OF THE BRITISH PHOSPHATE COMMISSIONERS AND THE CHRISTMAS ISLAND PHOSPHATE COMMISSIONERS* 6 (1985); NANCY VIVIANI, *NAURU: PHOSPHATE AND POLITICAL PROGRESS* vii (1970).

90. MASLYN WILLIAMS & BARRIE MACDONALD, *THE PHOSPHATEERS: A HISTORY OF THE BRITISH PHOSPHATE COMMISSIONERS AND THE CHRISTMAS ISLAND PHOSPHATE COMMISSIONERS* 7, 130–31 (1985); NANCY VIVIANI, *NAURU: PHOSPHATE AND POLITICAL PROGRESS* 47–49 (1970).

Australian agriculture and global food economies, as the island became a hub of the global fertilizer industry.⁹¹

Today, the country is the seat of a staggeringly large, fly-in-fly-out refugee industry. Since the offshore refugee industry's reestablishment in 2012, Nauru has been transformed to a bustling boomtown. The country has gone from bankruptcy to one where asylum seekers and refugees wander the streets, while locals once again holiday in Brisbane, surrounded by a dramatic offshore legal, humanitarian, and security industry.⁹² Meanwhile, Nauru once again gives power to Australia's economy, as Australian politicians and capitalist industry successfully reap value from securitization discourses. Here, I follow Sandro Mezzadra and Brett Neilson in examining what they call the "border as a method of capital."⁹³ The modern geopolitical imaginary is based on the idea of state borders that territorially mark the jurisdiction of states. This impression of territorial control is an important part of the creation of the unevenly developed landscape produced by capital.

Deep imperial dependencies often underlie what are effectively "refugee supply chains." We can best view these geographies of circulation through a political economic lens, which takes into account how people become treated as commodities, the industry that undergirds that process, and the impacts of human offshore extractive projects on people's lives. Seeing refugees as commodities is essential in shedding stark light on the propensity of governments to outsource asylum processes to far-flung sites.⁹⁴

The next section turns to look at the creation of a legal and governance system around processing refugees in Nauru. I show how the institutionalization of refugees within legal practice has contributed to the development of Nauru's offshore system. The law, I argue, plays an important part in solidifying Nauru's landscapes of accumulation, in particular when it comes to indigenizing projects between sovereign nations.

91. MASLYN WILLIAMS & BARRIE MACDONALD, *THE PHOSPHATEERS: A HISTORY OF THE BRITISH PHOSPHATE COMMISSIONERS AND THE CHRISTMAS ISLAND PHOSPHATE COMMISSIONERS* 490 (1985); NANCY VIVIANI, *NAURU: PHOSPHATE AND POLITICAL PROGRESS* 37–38, 173, 176 (1970).

92. Morris, *supra* note 4, at 1129.

93. SANDRO MEZZADRA & BRETT NEILSON., *BORDER AS METHOD, OR, THE MULTIPLICATION OF LABOR* vii–ix. (Brent Edwards et al. eds., 2013).

94. Jennifer Hyndman & Alison Mountz, *Another Brick in the Wall? Neo-refoulement and the Externalization of Asylum by Australia and Europe*, 43 *GOV'T & OPPOSITION* 249, 250–52, 255, 260–61 (2008); Julia Morris, *Power, Capital, and Immigration Detention Rights: Making Networked Markets in Global Detention Governance at UNHCR*, 17 *GLOBAL NETWORKS* 400, 404 (2017); Alison Mountz & Linda Briskman, *Introducing Island Detentions: The Placement of Asylum Seekers and Migrants on Islands*, 6 *SHIMA: THE INT'L J. OF RES. INTO ISLAND CULTURES* 21, 22 (2012); Alexander Sager, *Private Contractors, Foreign Troops, and Offshore Detention Centers: The Ethics of Externalizing Immigration Controls*, 17 *HISP./LATINO ISSUES IN PHIL.* (Am. Phil. Ass'n, Newark, Del.) at 13 (2018).

A LEGAL TERRA NULLIUS

In the opening of this Article, I describe some of the dramatic legal and institutional changes taking place in Nauru in order to make offshoring a possibility. Because Nauru had no history of refugee legislation or resettlement, the Nauruan and Australian governments solicited professional advisors to interpret international refugee legislation and formulate an ideal vision that fit in with the political strategies of Australia's regional migration management plans. Two emerging professions in international refugee and migration law found government utility for their expertise. Here, they could distill the foremost principles of UNHCR's international legal system to plan and build a processing system on a national scale. Over the years, under the auspices of UNHCR, specialist training and development work in refugee law and practice has created a vanguard of refugee experts.⁹⁵ The formation of the Nauruan refugee system drew on these global networks of transnational professionals and advice was elicited from many quarters. Engagements between international and national agencies, academics, and UN intergovernmental and government divisions focused on strengthening Nauruan legal structures, infrastructural services, and national capabilities to appropriately house the center.⁹⁶

Globally, the institutionalization of refugees within legal practice was instrumental to the development of Nauru's offshore asylum system. The design of Nauru's determination system was presented as affording a "unique opportunity" for international refugee law experts to try something groundbreaking.⁹⁷ Ideas were discussed in prestigious research centers like the Kaldor Centre for International Refugee Law at Sydney's University of New South Wales and the University of Oxford's Refugee Studies Centre, as well as through working groups and more informal fora.⁹⁸ Refugee professionals found the chance to explore their theories about a refugee processing system's optimum architecture, which evolved into directives for the Nauruan project. Little different from eighteenth century impulses, which saw the imperial Pacific as a laboratory for scientific thought, this "unspoiled, living archive"⁹⁹ offered unprecedented opportunities for the testing of hypotheses. Later, the design was championed at legal conferences as a cutting-edge framework, which could contribute to refugee assessments "throughout the region."¹⁰⁰

95. Alexander Betts, *The Refugee Regime Complex*, 29 REFUGEE SURV. Q. 12, 29 (2010); Julia Morris, *Power, Capital and Immigration Detention Rights: Making Networked Markets in Global Detention Governance at UNHCR*, 17 GLOBAL NETWORKS 400, 401 (2017).

96. Uncited information throughout the body of this article is original ethnographic data acquired from my fieldwork.

97. *Id.*

98. *Id.*

99. K.R. HOWE, NATURE, CULTURE, AND HISTORY: THE "KNOWING" OF OCEANIA (2000).

100. See Shyla Vohra, Nauruan Department of Justice and Border Control Deputy Director, Paper Presented at the Access to Asylum: Current Challenges and Future Directions Conference at

Meanwhile, in Nauru, local motivation for legal acquiescence also stemmed from European claims to technological and scientific superiority. The colonial claim that law is a sign of civilization and rationality has an enduring legacy in Nauru as does the reliance on foreign legal assistance. Even after independence, the country continues to use the *Queensland Criminal Code*, the appeals court remains the High Court of Australia, and judges and legal personnel are still recruited from overseas. Many in the Nauruan government saw the clear economic benefits of the refugee offshoring arrangement, but ironically—in light of activist narratives—also maintain an ecclesiastical belief in the virtues of international refugee law, and of providing sanctuary to refugees. They consented to an influx of Australian officials into Nauruan government positions, including those familiar with international refugee and human rights law. As immigration and refugee management services are well-institutionalized industry sectors in Australia, many of the requisite firms and bureaucratic administrators easily expanded their institutional fabric to Nauru. The formation of the Nauruan refugee system drew on these global networks of transnational professionals, slotting into a legal system that already revolved around a culture of fly-in-fly-out (FIFO) advisors. They worked on rebuilding and reordering the remains of the colonial infrastructure of phosphate extraction in service of an extractive project around refugees.

Because the Nauruan government had little idea of what a refugee legal system entailed, a Joint Advisory Committee for Regional Processing Arrangements (JAC) was created. JAC was divided into two subcommittees: (1) the Refugee Status Determination (RSD) and Claims Assistance Subcommittee and (2) the Physical and Mental Health Subcommittee. The Physical and Mental Health Subcommittee focused on enhancing medical provisions in the processing centres and the local hospital, whereas the RSD Subcommittee advised on matters relating to refugee processing operations. The subcommittees consisted largely of representatives from mainland advisory bodies and prominent legal and medical industry professionals. The Nauruan government was keen to uphold excellence in its refugee operations but had little idea of the system of refugee status determination. While concern for human welfare and the rule of law was for many their *raison d'être*, none had devoted their work to specializing in refugees. A few Nauruan government representatives held positions in JAC, but this was largely a token gesture. While labelled as a joint endeavour, the Subcommittees consisted almost entirely of Australian representatives, in which UNHCR staff maintained observational status, giving advice around operational improvements. Refugee legislation, regulations, and policy were emailed around the refugee experts and their affiliates, with track changes made over Refugee Convention interpretation, additional points for

the Monash University Prato Centre, Italy: Establishment of a New National Refugee Determination System: Threats and Opportunities; the Case of Nauru (May 29, 2014).

consideration, and spelling and grammatical corrections. The issue of testimony and fair hearing was, for many of those I spoke with, their top priority and they hoped to obtain justice for asylum seekers by an improved administration of law.

While externally critical of the Nauruan project, intergovernmental agencies played a crucial role. Members of the UNHCR and OHCHR worked behind-the-scenes to make the regime more humane. OHCHR provided legal templates, allowing for the development of different classes of visas arising throughout the project's phases. After a much-criticized RSD role in Nauru's first instantiation, UNHCR refused the same explicit involvement in the island's industry resurrection. UNHCR continues playing a significant role in determination operations worldwide. However, for a hugely problematic offshore system, it was decided by UNHCR representatives that a behind-the-scenes advisory role was preferable in this instance. To facilitate this, UNHCR staff conducted biannual monitoring visits and maintained observer status on JAC and other expert panels, giving advice on system improvements. This supplemented the work of larger NGOs like Red Cross and Amnesty who combined critical statements on Nauru with behind-the-scenes advice for operational reform. They did this for a number of reasons, most of which went to the classic humanitarian paradox of a "if not us, then who?" mentality. In fact, many of the practitioners I spoke with were highly conflicted about whether to operate inside or outside the system,¹⁰¹ and moral concerns lay at the heart of economic activity.

Between this diverse body of refugee planners, capacity building and quality assurance were citation considered key elements of the program's design. Training and support arrangements were an integral part of building Nauru's RSD processing capacity. As part of this package of assistance, a FIFO team of Australian case officers decided refugee status on behalf of the Government of Nauru. Operating on a ten-week assessment cycle, they worked concurrently with a taskforce of Australian Immigration Department case officers deployed as mentors. The case officers trained and coached Nauruans on mastering refugee status assessment. Training plans were developed for the new refugee determiners, identifying appropriate developmental tasks that would help develop their knowledge and skills to become competent assessors.

Here, there were more notable challenges deeply tied into Nauru's colonial history. Nauru has an established court system set up under German coconut rule and progressively expanded under phosphate administration. The state judicial structure consists of a district court, family court, and Supreme Court, housed in a courthouse attached to the government buildings. In a country that has relied on extrajudicial authority since colonial rule, lawyers are a handful in number; no one is judicially trained. Following independence, a semi-professional system of Australian Victorian Bar-trained pleaders or "bush lawyers" was established to offer Nauruans more participation in their country's legal system. Yet few are

101. Morris, *supra* note 4, at 1129.

legally proficient. Instead, the government employs expatriates to do Nauru's legal work and provide the judiciary with magistrates and judges. With the support of New Zealand legal funding, judges are recruited from overseas. Respected Australian and Fijian judges sit on Nauru's bench, along with dedicated Fijian professionals who strive to reorganize the country's legal system from virtual abandonment in phosphate heydays.

Few Nauruans actually responded to the Australian government's recruitment drive for determination personnel. But even then, the training could not pragmatically be taken on by Nauruans. To qualify an Australian public servant to conduct RSD takes a minimum of six months. The determination trainee observes others making credibility assessments, they are then observed and quality assessed over a long period. Refugee assessors also have access to information-sharing provisions with other countries, such as the United States in places like Iraq and Afghanistan, which can be used to inform the decision-making of an asylum seeker's credibility of fear. While the Australian government is closely allied with the American government, one of only four other countries in the "Five Eyes" arrangement,¹⁰² the Nauruan government has a colorful history of US diplomatic relations. They have a legacy of offshore banking with Russia in the late 90s, laundering AU\$70 billion of funds,¹⁰³ and passport selling across the Middle East (1,000 passports by 2003 for AU\$1,500 each).¹⁰⁴ The small yet entrepreneurial state also had instantaneous alliances with China over Taiwan at the drop of a pile of cash, including close relations with Cuba.¹⁰⁵ They then had the history of Operation Weasel in 2003, a failed deal with the CIA in which they were set to lodge North Korean scientists in their shop-front Beijing embassy in exchange for cash payments.¹⁰⁶ With this

102. ERIK PAUL, *LITTLE AMERICA: AUSTRALIA, THE 51ST STATE* 192–93 (2006).

103. Helen Hughes, *From Riches to Rags: What Are Nauru's Options and How Can Australia Help?*, 50 *ISSUE ANALYSIS* at 8 (2004).

104. Tony Thomas, *The Naughty Nation of Nauru*, QUADRANT ONLINE, Jan. 1, 2013, <https://quadrant.org.au/magazine/2013/01-02/the-naughty-nation-of-nauru/1/> [https://perma.cc/CRA8-TBRD] (last visited Sept. 24, 2019). In 2001, the US government defined Nauru as a "rogue state" under the 2001 Patriot Act, forbidding American banks to do business with the country. Helen Hughes, *From Riches to Rags: What Are Nauru's Options and How Can Australia Help?*, 50 *ISSUE ANALYSIS* at 8 (2004).

105. In 2007 the Nauruan government reinvigorated their Cuban ties on a diplomatic visit to Havana, during which time, Nauru's Foreign Minister, David Adeang, extolled Cuban policies and criticised US foreign policy. The Cuban government provides medical training to Nauru, and other Pacific island states, reciprocally deploying Cuban doctors to Nauru on an intermittent basis. *Cuba-Nauru Joint Commission to Open in Havana*, CUBAN NEWS AGENCY, (Oct. 2, 2007), <http://www.cubanews.ain.cu/2007/1002nauru-cuba.htm> [https://perma.cc/6QA9-B3HA].

106. Under Operation Weasel, President Ludwig Scotty agreed to setup a shop front Nauru Embassy in Beijing through which the CIA could smuggle North Korean defectors in collaboration with the New Zealand government. When accused by China, both the US and New Zealand governments denied the scheme, pointing the finger at the Nauruan government. Nauru closed their embassies in Beijing and Washington D.C. in August 2003, never receiving the promised cash

past, Nauru was unlikely to ever be given access to the Allied information sharing provisions required for RSD Assessment in the “mainland style.”

“Without the intel data access, even the most qualified Nauruan officer will still not be able to make as strong a decision as an Australian officer and that’s in the best case scenario across the board. That’s not what we’ve got on Nauru,” commented one Australian Immigration Department official to me.¹⁰⁷ And so, while continuing to outwardly stress that “Australia’s role extends to assistance and support only . . . departmental staff are not decision makers,”¹⁰⁸ that “Nauru is responsible for the RSD process,” and that it is the case that Nauru manages and controls the RSD process,¹⁰⁹ the labor for the refugee system—like Nauru’s phosphate era before it—also came through an influx of Australian workers into Nauruan government positions. Instead, in this new industrial era, Nauruans took on superficial high-ranking and menial positions. The Nauruan Secretary for Justice gave a shop front signature to refugee determinations, behind which operated a back office manned by Australian-seconded “Nauruan government” employees.

Along with these training programmes in place, there was no escaping that further up the line the demands of the project still clearly required people trained in Western legal structures. The progression of asylum appeals towards judicial review also necessitated bureaucratic expansion. More amendments needed to be made to Nauru’s Refugee Convention Act, in addition to the drafting of refugee status determination decisions for secretarial review. Competent drafters and those with an awareness of international rights protocols had to be on hand. More Australians continued to fill some of these posts, but, in their attempts to escape the project’s postcolonial associations, the Nauruan government began employing legally trained Fijian administrators. Schooled at Australian universities or the Commonwealth-born University of the South Pacific, Fijian staff were already well versed in Western legal structures from the legacies of British colonial rule. In this way, colonial patterns of labor importation were reproduced, but through inter-island legal elicitation among post-colonies.

As a biopolitical tool, legal infrastructure made migrants legible in particular ways, engineered as economic subjects. I turn now to look at the on-the-ground realities of this legal system in order to capture the consequences of these forms

amount. Eugene Bingham, *Shadowy Kixi ‘CIA operative’*, NZ Herald (Apr. 26, 2003), https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=3451318 [https://perma.cc/6U8W-EHXC].

107. Personal Interview, Sydney, April 2015.

108. *Budget Estimates Hearing: 27-28*, AUSTRALIAN GOV’T (May 2013), http://www.aph.gov.au/~media/Estimates/Live/legcon_ctte/estimates/bud_1314/diac/BE13-0039.ashx [https://perma.cc/MXU3-VDMJ].

109. Rea Hearn Mackinnon, Attorney at the Nauru Refugee Review Tribunal, Paper Presented at the International Association of Refugee Law Judges Conference in Tunis, Tunisia: Comparative RSD Systems – Nauru (2014).

of human extraction. The majority of asylum seekers I spoke with in Nauru were placed in positions where making asylum representations was the only means of moving across state borders. This is not to deny that most have been through traumatic experiences and should be legally recognized as refugees. Instead, it is indicative of the sort of injustices that the asylum seeker system can generate, where people must represent themselves through narratives of suffering to move across nation-state borders.

EXTRACTIVE IMPACTS

In a number of respects, Nauru's latest industry in processing asylum seekers comes with tremendous pollutant effects, like the state's industrial enterprise of phosphate extraction. In the phosphate industry, dry rock circulates on conveyor belt extraction rounds.¹¹⁰ Cadmium toxins are released into the atmosphere from an unnatural metallurgical process, all with immense social and ecological repercussions.¹¹¹ In Nauru's offshore refugee processing centers, human bodies were fed through a dangerous legal manufacturing cycle of untold human and economic costs. Self-harm, anger, fear, and frustration were everyday realities. As with other practices of commodity assessment, ensuring certifiable "refugeeness" is essential to the global refugee industry.¹¹² Asylum seekers are treated with suspicion whereas in contrast state citizens or migrants from Euro-American countries or wealthy socioeconomic backgrounds are seen as safe and reliable.¹¹³ The forms of assessment in place in Nauru's refugee processing system are all the more elaborate where the origin of asylum seekers arriving by boat was viewed as hazy and unreliable. Asylum seekers underwent extensive "rituals of purification"¹¹⁴ as it ensured the problematic distinction between the categories of "refugee" versus "economic migrant."

During my fieldwork, all asylum seekers were sent to Christmas Island after interception by the Australian coastguard in the Timor Sea or Indian Ocean, if not pushed back prior. Christmas Island, another once-phosphate, now-refugee isle, became the main hub for deciding whether to send asylum seekers to Manus Island or Nauru. All asylum seekers underwent a preliminary post-transfer assessment or PTA by Australian Immigration Department RSD Officers and

110. S. J. Gale, *The Mined-Out Phosphate Lands of Nauru, Equatorial Western Pacific*, 63 AUSTL. J. OF EARTH SCI., 333–34, 336 (2016).

111. Blake, C. 1992. *Environmental Distribution of Heavy Metals on Nauru, Central Pacific, and Possible Relationships to Human Health*. B. Appl. Sci. Honours Report, University of North England, NSW, Australia.

112. IAN HARPER ET AL., *THE CLINIC AND THE COURT: LAW, MEDICINE AND ANTHROPOLOGY* (2015).

113. Nancy Rosenberger, *Global Food Terror in Japan: Media Shaping Risk Perception, the Nation, and Women*, 48 ECOLOGY OF NUTRITION & FOOD 237, 253 (2009).

114. MARY DOUGLAS, *PURITY AND DANGER: AN ANALYSIS OF CONCEPTS OF POLLUTION* (1966).

contracted International Health and Medical Services (IHMS) clinicians at the processing center on Christmas Island's own Phosphate Hill. Everyone was logged by boat ID under the operational term Suspected Irregular Entry Vessel or SIEV, commonly referred to as "client," "transferee" or boat ID by medical, social worker, refugee determination, and other workforces. This was, several asylum seekers in Nauru told me, a hugely objectificational process where, one individual put it, he "felt like cattle being inspected."¹¹⁵ In the extraction of phosphate, roasting and crushing is done to remove impurities in the form of gangue minerals.¹¹⁶ Here, routine chemical tests include a PTA interview, Health Induction Assessment, and bio-data collection to determine refugee probability and "fitness to travel" (FTT) to Pacific processing sites. During these assessments, vulnerabilities, family links to Australia, and initial refugee narratives are noted into electronic medical and RSD Registry databases that travel with asylum seekers to the regional processing sites.

To clear asylum seekers for the processing stages, the initial Christmas Island health assessments included a public health screen, nursing general assessment, and general practitioner evaluation. All asylum seekers were checked and treated for particular diseases, such as Hepatitis B and C, HIV, and syphilis, through physical examinations, chest x-rays, and blood and urine tests. Clinicians' evaluations of each asylum seeker's mental health states were also conducted including the prevalence of torture and trauma (T&T), posttraumatic stress disorder (PTSD), or other psychiatric diagnoses relevant to the particularities of determining who constitutes a refugee.¹¹⁷ These many technical procedures reveal how bodies are marked as unclean and categorized within differentiating discourses of "cultural competences, sexual proclivities, psychological dispositions, and cultivated habits."¹¹⁸ Alison Bashford discusses how healthcare regimes have become one means of ensuring the boundaries of citizenship.¹¹⁹ For Bashford, writing on what she calls "imperial hygiene," the

115. Personal Interview, Republic of Nauru, June 2015.

116. PETR PTACEK, APITATES AND THEIR SYNTHETIC ANALOGUES: SYNTHESIS, STRUCTURE, PROPERTIES AND APPLICATIONS 390 (2016).

117. See generally Liisa Malkki, *Refugees and Exile: From "Refugee Studies" to the National Order of Things*, 24 ANN. REV. OF ANTHROPOLOGY 495, 509–10 (1995) (discussing refugees as an anthropological domain of knowledge); Vanessa Pupavac, *Refugee Advocacy, Traumatic Representations and Political Disenchantment*, 43 GOV'T & OPPOSITION 270, 278 (2008) (discussing the use of trauma diagnosis and counseling to reaffirm refugees' authenticity); Jay Marlowe & Carole Adamson, *Teaching Trauma: Critically Engaging a Troublesome Term*, 30 SOC. WORK EDUC. 623, 626 (2011) (discussing the cultural constitution of trauma within refugee processing).

118. ANN LAURA STOLER, RACE AND THE EDUCATION OF DESIRE: FOUCAULT'S HISTORY OF SEXUALITY AND THE COLONIAL ORDER OF THINGS 8 (1995).

119. ALISON BASHFORD, IMPERIAL HYGIENE: A CRITICAL HISTORY OF COLONIALISM, NATIONALISM AND PUBLIC HEALTH 13, 33 (2004); Alison Bashford, *The Age of Universal*

colonial management of race in the eighteenth and nineteenth centuries joined with public health policies to constitute the new boundaries of a “racialized *cordon sanitaire*.”¹²⁰ Clearly there are deeply racist policies made manifest in which people from particular countries—largely in the global south—are represented as posing an imminent danger through the language of quarantine and containment. Medical practices and legal determinations collide in the project of determining refugee from economic migrant. As Miriam Ticktin has similarly observed in the case of healthcare systems for asylum seekers in France, these forms of humanitarian governance maintain people as far less than human.¹²¹

From the Christmas Island assessments, all asylum seekers were marked for suitability of transfer to a regional processing site by IHMS medical inspectors, placed in categories of green, amber, or red. A red-screened asylum seeker was identified as having complex medical requirements that were expected to require medical attention unavailable at a regional processing site. A green categorization, on the other hand, indicated regional processing suitability, in which no significant physical or mental health issues were identified. Amber operated somewhere in between, with further assessment required. In order to combat more red categorizations, incremental funding was put into the medical setups at Christmas Island’s and Nauru’s regional processing sites. Not only is the governmental rationale to prevent potential bad press, which might force the closure of the operations, but also to ensure fewer medical evacuations (medivacs) to the mainland.¹²² On the one hand, medivacs are expensive, with their own industry actors manned by peak organizations like the Royal Flying Doctors of Australia. On the other hand, physically circulating an asylum seeker to the mainland often leads to high profile activist campaigns, which the Australian Immigration Department seeks to avoid.¹²³ Sending asylum seekers

Contagion’: History, Disease, and Globalization, in *MEDICINE AT THE BORDER: DISEASE, GLOBALIZATION AND SECURITY, 1850 TO THE PRESENT* 1, 7–8, 11 (Alison Bashford ed., 2006).

120. ALISON BASHFORD, *IMPERIAL HYGIENE: A CRITICAL HISTORY OF COLONIALISM, NATIONALISM AND PUBLIC HEALTH* 5 (2004).

121. Miriam Ticktin, *Where Ethics and Politics Meet: The Violence of Humanitarianism in France*, 33 *AM. ETHNOLOGIST* 33, 35 (2006).

122. PHYSICAL AND MENTAL HEALTH SUBCOMM., JOINT ADVISORY COMM. FOR NAURU REG’L PROCESSING ARRANGEMENTS, NAURU SITE VISIT REPORT 16–19 FEBRUARY 2014 (2014), <https://assets.documentcloud.org/documents/1175048/hmhsc-jac-site-visit-report-final-1.txt> (stating that over the 12 months between November 23, 2012 and November 29, 2013 there were 53 medical transfers or evacuations from Nauru to the mainland).

123. See Tom Allard, *Somalian Refugee Abyan Becomes A Political Pawn After Abortion Request On Nauru*, THE SYDNEY MORNING HERALD (Oct. 23, 2015, 7:11 PM), <http://www.smh.com.au/federal-politics/political-news/prisoners-island-offers-little-hope-for-new-life-20151022-gkggkx.html> [<https://perma.cc/Y8ET-ZLA7>]; Alexandra Beech, *Pregnant Asylum Seeker On Nauru Flown To Australia*, ABC NEWS (Feb 3, 2017, 8:41 AM), http://www.abc.net.au/news/2017-02-03/pregnant-asylum-seeker-on-nauru-flown-to-australia/8239662?mc_cid=1ba9917e28&mc

to the mainland also reduces the political potency of the spectacle that no asylum seeker arriving by boat will *ever* be resettled in Australia. Because of the Nauruan government's compliance in meeting the Australian government's directives, Nauru swiftly became Australia's main offshore processing site. This included the processing of children, all of whom were processed in Nauru as of 2013—until 2019—in an extensive operation managed by Save the Children and mainland advisory teams.

Ken Maclean¹²⁴ uses the term “extractive enclaves” to describe temporary encampments that are constructed around natural resource ventures in Burma.¹²⁵ Resource extractors seek to consolidate control over commodities and populations, creating spaces that make “intensive forms of commodity extraction possible.”¹²⁶ Maclean's descriptions pair starkly with the infrastructural environments experienced by asylum seekers in Nauru. Upon arrival in Nauru, all asylum seekers were transferred directly to one of two newly built processing centres in the heart of the country's phosphate fields: RPC Two for single men eighteen years and older or RPC Three for families, unaccompanied minors, and single adult females. These were made open to in-and-out movement in 2015. Some unaccompanied minors designated as low-risk were also placed in foster care set-ups with local Nauruan families under community processing arrangements.

Following the work of Australian Immigration Department, UNHCR Canberra, and international industry advisors, Nauru now has an RSD Registry, inaugurated in 2013. Nauruan or, often, Australian, employees log each new arrival into the Registry database. These notes supplement the bio-data collection made during the Pre-Transfer Assessment interviews on Christmas Island.¹²⁷ At this stage, asylum seekers are provided with an Australian refugee

_eid=7906bcbf06 [https://perma.cc/8CZR-5RDV]; Khanh Hoang, *What will happen to baby Asha?*, THE CONVERSATION (Feb 16, 2016, 1:23 PM), <http://theconversation.com/what-will-happen-to-baby-asha-54735> [https://perma.cc/R4PK-MDA8].

124. Ken Maclean, *Sovereignty after the Entrepreneurial Turn: Mosaics of Control, Commodified Spaces, and Regulated Violence in Contemporary Burma*, in *TAKING SOUTHEAST ASIA TO MARKET: COMMODITIES, NATURE, AND PEOPLE IN THE NEOLIBERAL AGE* 140, 142, 145 (Joe Nevins & Nancy Peluso eds., 2008).

125. *Id.* at 140.

126. *Id.* at 140–41.

127. See U.N. High Commissioner for Refugees, *UNHCR monitoring visit to the Republic of Nauru 7 to 9 October 2013* (Nov. 26, 2013), <https://www.rch.org.au/uploadedFiles/Main/Content/immigranthealth/2013-11-26%20Report%20of%20UNHCR%20Visit%20to%20Nauru%20of%207-9%20October%202013.pdf> (detailing the conditions of pre-transfer risk assessments on the Australian mainland in 2013); *Sydney Public Hearing 31 July 2014 Before the National Inquiry into Children in Immigration Detention 2014*, AUSTL. HUMAN RIGHTS COMM'N (2014) (Austl.) (transcript of Gregory Lake, Director of the Regional Processing Centre on Nauru), <https://www.humanrights.gov.au/sites/default/files/Mr%20Lake.pdf> (discussing the pre-transfer risk assessment process from the perspective of an immigration employee); *Immigration Detention*

defense lawyer or Claims Assistance Provider (CAP) so as to support them with the asylum process *for Nauru*. The refugee lawyers or migration agents are contracted through the Sydney-based firm Craddock Murray Neuman, who operate on FIFO rotation cycles of what in Australia are commonly termed “RSD missions” when conducted at far-flung processing sites in the Australian outback. In Nauru, CAP lawyers provide advice on refugee representation to people including the collation of photos, maps, medical, and psychological reports that emphasize veracity of fear and persecution. Craddock also has what they term a “shop front” in RPC One, where they lead group information sessions on the process.

RSD support is also conducted with the assistance of a contracted interpreter. In Australia the provision of an interpreter is an important part of the Australian *Migration Act 1958* (section 427(7)).¹²⁸ Depending on location, interpreters from TIS National, the Immigration Department’s contracted firm, have become the norm across Australia’s refugee processing hubs, now extended to Nauru’s offshore district. Many FIFO interpreters are specialists in credibility of fear translation work, often well versed in the legal jargon, having worked around Australia and in other offshore contexts and/or originally came to Australia as refugees through the asylum system.

What many asylum seekers undergoing RSD stressed to me was how the RSD system itself produced an affectivity that translated to any environment. “I felt like I was still in a jail wherever I was,” Andy commented to me.¹²⁹ “You can’t plan, you don’t know what the future will be, it’s hard to keep on going in that kind of situation,” Soraya said, expressing anguish about the inability to “be useful in any way” and “work towards future goals.”¹³⁰ Although several of those in process complained about the RPC environments, it was the lived experience of going through assessment that provoked, for many, far greater anguish, in particular what Melanie Griffiths¹³¹ describes as the “temporality” of the decision-making system, indeterminate in length. The major issues generating everyone’s anxieties were the lack of clarity around their processing and futures, and their frustrations at being blocked from moving to Australia,

on Christmas Island: Observations From Visit to Immigration Detention Facilities on Christmas Island, AUSTL. HUMAN RIGHTS COMM’N (2012), https://www.humanrights.gov.au/sites/default/files/document/publication/idc2012_christmas_island.pdf (detailing the pre-transfer risk assessment process on Christmas Island).

128. *Migration Act 1958* (Cth) s 427(7) (Austl.).

129. Interview with Andy (last name withheld), asylum seeker, in the Republic of Nauru (June 2015).

130. Interview with Soraya (last name withheld), asylum seeker, in the Republic of Nauru (June 2015).

131. Melanie B.E. Griffiths, *Out of Time: The Temporal Uncertainties of Refused Asylum Seekers and Immigration Detainees*, 40 J. OF ETHNIC & MIGRATION STUD. 1991, 1992–94, 2004 (2014).

which speaks to the violence attached to this human extractive practice. Recounting narratives of trauma was an incredibly retraumatizing experience for many asylum seekers I spoke with. But stories of trauma are intrinsic to the refugee system, on which individuals' visas are based. Thus, extraction takes a decidedly intimate form, premised on the extraction of people's personal experiences.

Several people I spoke with in Nauru, certified or waiting for refugee decisions, had very similar responses to those on the mainland and elsewhere about their experiences going through these screening procedures. They described the retraumatizing effect of having to collate past dreadful experiences into an objectified form. "It was horrible to go through," Luke said to me, then living in Nauru under a ten-year refugee visa.¹³² "I was told visuals were powerful, printing off pictures to show what I'd experienced, getting doctor's examination records. I had to go through it all again and again."¹³³ I could only wholeheartedly agree with Luke and others about the casualties that processing re-rendered. As Didier Fassin and Estelle d'Halluin have argued, for the dominated, the body "has also become the place that displays the evidence of truth."¹³⁴ In a climate of distrust, RSD practices have become ever-more scrutinizing over the years.¹³⁵ Asylum seekers must prove their suffering through medical expertise and new forms of scientific rationality,¹³⁶ in which medical certificates and evidence of psychological and physical scars are accorded greater veracity than the refugee narrative form.¹³⁷

As Luke makes clear, an important aspect of the determination process is the assessment of marks on the human body and psychological suffering. Luke, like others, had to show evidence of mental and bodily scarification to stress the authenticity of suffering, redoubling the amount of harm he had already been through as part of the asylum process. "Intense," "exhausting," and "scrutinizing" were some of the many words I heard used to describe refugee assessment in Nauru.¹³⁸ In-country screening procedures have become more elaborate, rendering autobiographical accounts superfluous to the veracity of

132. Interview with Luke (last name withheld), asylum seeker, in the Republic of Nauru (June 2015).

133. *Id.*

134. Didier Fassin & Estelle d'Halluin, *The Truth from the Body: Medical Certificates as Ultimate Evidence for Asylum Seekers*, 107 AM. ANTHROPOLOGIST 597, 597–608 (2005).

135. Estelle d'Halluin, *Local Justice in the Allocation of Medical Certificates During French Asylum Procedures: From Protocols to Face-to-Face Interactions*, in *THE CLINIC AND THE COURT: LAW, MEDICINE AND ANTHROPOLOGY* 117, 117 (Ian Harper, et al. eds., 2015).

136. MICHEL FOUCAULT, *THE BIRTH OF THE CLINIC* 90–91 (A.M. Sheridan trans., Routledge 2003) (1963).

137. Tobias Kelly, *Sympathy and Suspicion: Torture, Asylum, and Humanity*, 18 J. OF THE ROYAL ANTHROPOLOGICAL INST. 753, 759–60 (2012).

138. Interview with Luke (last name withheld), asylum seeker, in the Republic of Nauru (June 2015).

physical and psychic signs of accredited violence, what Webb Keane refers to as a “representational economy.”¹³⁹

Those undergoing assessment were also under an RSD system many months in length, all of which compound the tense registers that suffused the offshore environment around an indeterminate future. High aggression and outbursts were all everyday parts of the pressure-cooker environment. Others were incredibly depressed and did not see the point of going through the effort of refugee assessment, particularly if it meant the end goal of a Nauruan, not Australian, refugee visa. Many people never expected to end up in, let alone be assessed as a refugee for, Nauru. Maya, a certified refugee, told me how she had taken a boat in Indonesia bound for Australia, told by the broker that she would be determined as a refugee for and in Australia. Having spent months hiding out in Jakarta now she was stuck in limbo. Unable to return, Maya was faced with an unknowable future.¹⁴⁰

The toxic by-products involved in refugee processing are so well recognized that they have become naturalized as casualties endemic to industry operations. In Australia, psychiatrists created a new pathological condition. The human consequences of refugee processing are widely labelled by mainland clinicians as “Prolonged Asylum Seeker Syndrome.”¹⁴¹ The toxic effects of refugee determination, uncertainty of situation, producing documentary evidence, demonstrating past trauma, and refugee racism are all contributors to this industrial condition, characterized by powerlessness, depression, and identity crises.¹⁴² Nauru’s Finance and Justice Minister David Adeang proclaimed the country’s offshore processing superiority, announcing that “rates of murder, manslaughter, sexual assault, rape, all those statistics, are much lower than you in Australia, I am sorry to say.”¹⁴³ His comment emphasizes how “murder, manslaughter, sexual assault, rape, all those statistics” are part of the everyday culture that go with the system, all of which developed in natural formation in Nauru’s refugee industry. Between the fourteen months of September 2012 and November 2013, there were 102 recorded incidents of self-harm, including twenty-eight attempted hangings/asphyxiations; five people who cut their

139. Webb Keane, *Semiotics and The Social Analysis of Material Things*, 23 LANGUAGE & COMM. 409, 410–11 (2003).

140. Interview with Maya (last name withheld), asylum seeker, in the Republic of Nauru (June 2015).

141. Linda Hunt, *Psychiatrists Identify ‘Asylum Seeker Syndrome’*, WKLY. BULL. NO. 16 (Mental Health Council of Austl.), 2012, at 8, https://mhaustralia.org/sites/default/files/imported/component/rsfiles/mhca-bulletin/2012/MHCA_Bulletin_16.pdf.

142. *Id.* at 9.

143. *A Current Affair: Inside Nauru’s Detention Centre* (9 News television broadcast June 20, 2016).

throats; nine people who had sewn their lips together; and polypharmacy overdoses, cutting, and cigarette burns.¹⁴⁴

Certainly, it is far from preferable, and all those I spoke with would prefer to be undergoing RSD in Australia. It is also important to spurn on protests and movements against warehousing asylum seekers in far-flung locales. Yet, numerous studies and oral histories chronicle the experiences of individuals who live with this type of resource extraction: having no work rights, being subjected to demeaning NGO representations, and being in a waiting game—sometimes for several years in various forms of detention—before any decision is made.¹⁴⁵ And wherever the asylum system is located—whether it be Nauru or Australia—people must still perform within particular legal narratives, which gain purchase through the capital and labor of pathologized displays of bodily and psychological suffering.¹⁴⁶

EXTRACTIVE CONFLICTS

Yet, despite these documented human health hazards related to refugee status determination, the principle focus of activist practice targeted at Nauru has been to portray the offshore project as an exception, which operates against (not in fact through) the refugee legal system. Headlines like “Hundreds of Nauru refugees protest against ‘slave-like conditions,’” and “Australia asylum: Dutton says Nauru is ‘safe’ for refugees” operate prominently on the global scene.¹⁴⁷ In addition to evoking the tenets of refugee law, activists also like to conjure stark portraits of Nauruans as primitive and dangerous through civilizational discourses of savagery and underdevelopment. Organizations like Australia’s national Refugee Action Coalition have made public statements about a culture of local violence, in which refugees have been “smashed across the back with a baseball bat” and “pelted with rocks by local men.”¹⁴⁸ In the

144. AUSTL. JOINT ADVISORY COMM. FOR NAURU REG’L PROCESSING ARRANGEMENTS PHYSICAL AND MENTAL HEALTH SUBCOMM., NAURU SITE VISIT REPORT (2014).

145. Guy J. Coffey et al., *The Meaning and Mental Health Consequences of Long-term Immigration Detention for People Seeking Asylum*, 70 SOC. SCI. & MED. 2070, 2070 (2010); LUCY FISKE, HUMAN RIGHTS, REFUGEE PROTEST AND IMMIGRATION DETENTION 2–3 (2016); Melanie Griffiths, ‘Vile Liars and Truth Distorters’: Truth, Trust and The Asylum System, 28 ANTHROPOLOGY TODAY 8, 8 (2012).

146. Estelle d’Halluin, *Local Justice in the Allocation of Medical Certificates During French Asylum Procedures: From Protocols to Face-to-Face Interactions*, in THE CLINIC AND THE COURT: LAW, MEDICINE AND ANTHROPOLOGY 117, 124 (Ian Harper, et al. eds., 2015).

147. *Australia Asylum: Dutton Says Nauru is ‘Safe’ for Refugees*, BBC NEWS (Oct. 6, 2015), <http://www.bbc.com/news/world-australia-34450776> [<https://perma.cc/C6YY-TH9Q>]; Liam Fox & Sam Bolitho, *Hundreds of Nauru refugees protest against ‘slave-like living conditions’*, ABC NEWS (Mar. 23, 2015, 4:52 PM), <http://www.abc.net.au/news/2015-03-02/nauru-refugees-protest-against-slave-like-conditions/6275236> [<https://perma.cc/79PF-JT8J>].

148. See Ben Doherty, *Nauru: Iranian Refugee Couple Pelted with Rocks by Local Men*, *Sources Say*, THE GUARDIAN (Mar. 17, 2015, 3:42 P.M.), <https://www.theguardian.com/world/>

popular discourse on Nauru, the emphasis has been to largely degrade the local population and represent refugees as vulnerable and agentless. We regularly hear representations that reek of colonial civilizational mentalities, which link Nauruans with imaginaries of barbarism and underdevelopment. The popular image typified of Nauru harks back to the country's colonial yesteryear, where imaginaries of savages and cannibals allowed the British Phosphate Commission to impose their will on the population.¹⁴⁹

Some refugees, in sheer desperation, have also emphasized these portrayals. Others have worked to counter such representations and protest about the injustices of the Australian-driven system, while defending the actions of many Nauruans. Still more refugees I met put their heads down in the hopes of eventual resettlement elsewhere. All of these actions emphasize the structural bind that asylum seekers and refugees are trapped within, which operates within the hegemonic vice of international refugee law. As Li notes, in conflicts over mining practices, organizers must rely on technical and scientific experts in order to make serious claims about environmental pollution.¹⁵⁰ Both scientific knowledge about pollution and technical information about laws and regulations, Li shows, were crucial in activists making arguments that would produce a desired result—either the clean-up of existing pollution or the stoppage of a new permit.¹⁵¹

So too with refugee legal knowledge, which frames people who move in terms of suffering and vulnerability. This technocratic governance further benefits NGOs and corporations who often have a team of refugee experts from which they can argue that they are utilizing “best practices” in their resource extraction techniques. As refugee law has become such an institutionalized practice, the transnational class of refugee experts and enterprises that facilitate its norms are part of a “modular capitalist project,”¹⁵² which makes this violent practice possible. As I have argued elsewhere, victimizing representations ironically give more moral value to the mobile global industry tasked to carry out the operations in places like Nauru on an everyday basis.¹⁵³ These sorts of imaginaries also reinforce the validity of the overall international refugee

2015/mar/17/nauru-iranian-refugee-couple-pelted-with-rocks-by-local-men-sources-say [https://perma.cc/NWR8-83B8]; Michael Edwards, *Tensions on Nauru Heightened After Series of Attacks on Refugees by Locals*, ABC NEWS (Mar. 19, 2015, 4:42 PM), <http://www.abc.net.au/news/2015-03-20/tensions-high-on-nauru-after-attacks-on-refugees/6334234> [https://perma.cc/Z6YR-E4FH].

149. See CLIFFORD W. COLLINSON, *LIFE AND LAUGHTER 'MIDST THE CANNIBALS* 235, 237, 239 (1926).

150. FABIANA LI, *UNEARTHING CONFLICT: CORPORATE MINING, ACTIVISM, AND EXPERTISE IN PERU* 75–76 (2015).

151. *Id.* at 92–98.

152. Hannah Appel, *Offshore Work: Oil, Modularity, and the How of Capitalism in Equatorial Guinea*, 39 AM. ETHNOLOGIST 692, 706 (2012).

153. Morris, *supra* note 4, at 1131.

system. After all, the power of refugee law was what brought Nauru into fruition in the first place as part of a regional cooperation framework devised by UNHCR and government divisions.

Despite the violence and self-harm in Nauru among asylum seekers and refugees, it was also—like the activists—the asylum system that the Australian and Nauruan governments latched onto in an attempt to gloss over the overall brutalities of the offshoring-setup. On the one hand, Nauru is represented by the Australian government under a policy of deterrence where discourses of brutality are actually profitable to the border spectacle. On the other, for concerned advocates, Nauru was represented as a legal system that is “truly world class” by Nauru’s Australian Deputy Secretary announced in their paper presentation “Establishment of a New National Refugee Determination System: Threats and Opportunities; the Case of Nauru” at the Panel Session “Protection and Decision-making in the Asia Pacific and African regions” for Monash University’s Access to Asylum Conference in Italy.¹⁵⁴ Just as mining companies and development agencies like to tell stories of progress and development,¹⁵⁵ the rule of law was used in Nauru’s industry—along with the spectacle of infrastructural wealth¹⁵⁶—to manipulate what, in the mining industry, Kenneth Gould¹⁵⁷ describes as “the social visibility of pollutants.”¹⁵⁸ Here, different levels of government attempted to manipulate public perception of local conditions to promote their political economic interests.

Overall, refugee law is a major part of the project of extracting money and morality from people who move—and are, of course, forced to move. Refugee legal tenets are largely upheld and represented in benevolent terms by a proliferation of NGOs, corporations, government divisions, and activists. Ultimately, however, as this Article has endeavored to show, refugee law is a major source of the problem. Over the years, activists and advocates have detailed a litany of ways in which Nauru’s asylum system fails to meet international legal requirements.¹⁵⁹ Yet, over the course of my fieldwork, the

154. Shyla Vohra, Nauruan Department of Justice and Border Control Deputy Director, Paper Presented at the Access to Asylum: Current Challenges and Future Directions Conference at the Monash University Prato Centre, Italy: Establishment of a New National Refugee Determination System: Threats and Opportunities; the Case of Nauru (May 29, 2014).

155. ALEX GOLUB, *LEVIATHANS AT THE GOLD MINE: CREATING INDIGENOUS AND CORPORATE ACTORS IN PAPUA NEW GUINEA* 2, 5, 11 (2014).

156. Morris, *supra* note 4, at 1123.

157. Kenneth A. Gould, *Pollution and Perception: Social Visibility and Local Environmental Mobilization*, 16 *QUALITATIVE SOC.* 157, 159 (1993).

158. *Id.*

159. See *Australia: Appalling Abuse, Neglect of Refugees on Nauru*, HUMAN RIGHTS WATCH (Aug. 2, 2016), <https://www.hrw.org/news/2016/08/02/australia-appalling-abuse-neglect-refugees-nauru> [<https://perma.cc/87PG-W7JQ>] (last visited Aug. 20, 2019); Phillip Moss, *Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru*, AUSTL. GOV’T DEP’T OF HOME AFFAIRS (Feb. 6, 2015), <https://www.border.gov.au/Re>

Australian and Nauruan governments adopted many of these recommended operational improvements. They invested unprecedented amounts of money in Nauru's asylum system, education and medical provisions, and monitoring programs in order to insulate themselves against legal challenges—effectively “greenwashing” themselves against the consequences of resource extraction.¹⁶⁰ However, these accountability programs, while giving the façade of transparency and oversight, avoid real structural change and ignore the profound devastations wrought by forcibly resettling people in small island contexts.

Ultimately, Nauru is a potent example of the lasting power of colonial institutions and international legal complicity. In upholding a system that fulfils a former colonial administrator's prerogatives, Nauru remains dependant on Australia for human resources to fill its facilities, and refugee experts and businesses to codify and institutionalize its refugee legal system, whilst being bound up in histories of colonial tutelage. The operation necessitates the extensive guidance of Australian and European personnel who understand the minutiae of refugee protocols. Likewise, industry services that cover the specialist and large-scale nature of the project must be brought in from other states. The legal and governance arrangements developed throughout Nauru's history of colonial enterprises make this an easier endeavour.¹⁶¹ The refugee industry is the latest in a series of commercial and imperial ventures that have defined Nauru's developmental trajectories from the colonial period to the present.

CONCLUSION

Innocence structures our relationships to make some of us saviors and others victims . . . it leaves little room to think that we might also be responsible for these migrants' plight (by helping to create the conditions that they are fleeing,

portsandPublications/Documents/reviews-and-inquiries/review-conditions-circumstances-nauru.pdf (last visited Aug. 20, 2019); *Serious allegations of abuse, self-harm and neglect of asylum seekers in relation to the Nauru Regional Processing Centre, and any like allegations in relation to the Manus Regional Processing Centre*, SENATE LEGAL AND CONSTITUTIONAL AFFAIRS REFERENCES COMM. (April 21, 2017), http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/NauruandManusRPCs/Report [https://perma.cc/X8ZL-ZJZ7] (last visited Aug. 20, 2019); *UNHCR monitoring visit to the Republic of Nauru*, U.N. HIGH COMM'R FOR REFUGEES (Nov. 26, 2013), <https://www.unhcr.org/en-us/publications/legal/58117b931/unhcr-monitoring-visit-to-the-republic-of-nauru-7-to-9-october-2013.html> [https://perma.cc/92RX-MNGF].

160. See Lauren Beldi, *Nauru Faces Uncertain Economic Future as Asylum Seekers Leave and the Money Dries up*, ABC NEWS (Sept. 5, 2018, 3:58 PM), <https://www.abc.net.au/news/2018-09-06/when-asylum-seekers-stop-where-will-nauru-get-its-money/10199362> [https://perma.cc/3XZG-ESCZ] (stating that Australia funded infrastructure projects in Nauru).

161. Morris, *supra* note 4, at 1125.

from war and poverty to climate change) . . . deflecting attention from the real problems that lead to such mass movements of people. — Miriam Ticktin¹⁶²

This Article has sought to advance an interpretation of Nauru's refugee processing system as a resource extractive industry, in which refugee law is a central part. Many like to position international refugee law as an apolitical or even anti-political project. However, I have traced how the resulting picture is more complex, entangled in capital, moral, and geopolitical prerogatives, rulemaking, statistical analysis, and the thriving trade in refugee services. The key word is "protection." As refugee orthodoxy has acquired incremental durability over the years, the fetishization of "refugee protection" and belief in the benevolence of organizations like UNHCR and its development apparatus has become deeply entrenched. Underneath, refugee politics help engineer human life around the legislative stipulations of proving one's suffering inscribed with cultural ideas about global democracy, individual, and collective worth. The resource extractive approach offers an analytical framework for linking the concrete ways that refugee processing is carried out in techno-organizational terms with the tragic effects of resource governance on people's lives. There is certainly no doubt that we are living in an age where market values have expanded into all manners of "intimate spaces of human existence."¹⁶³ Here, capitalist values have encroached into new forms of extractive intrusion that amounts to extracting value(s) from humans.

Liberal democratic politics has become intrinsic to anthropology, with questions revolving around relevance, agency, "intellectual-moral engagement,"¹⁶⁴ and the law as a tool of enablement.¹⁶⁵ Following the production and circulation of refugees as commodities moves away from thinking about refugee work in moral, humanitarian, and legalistic terms, which can obscure the value-driven dynamics of why refugees have been commoditized as objects of intervention and the many industrialists, self-representations, artifacts and calculations involved in this commodity economy's operations. These findings hold insights for efforts to contest the injustices of capitalist extraction. As Miriam Ticktin and others have suggested, the humanitarian gauze can be a part of avoidance regimes. It glosses over

162. Miriam Ticktin, *What's Wrong with Innocence*, SOC'Y FOR CULTURAL ANTHROPOLOGY (June 28, 2016), <https://culanth.org/fieldsights/whats-wrong-with-innocence> [<https://perma.cc/9K2C-JT3Q>].

163. Florentina Andreescu, *Embodied Subjects in Late Capitalism*, 9 SUBJECTIVITY 145, 147 (2016).

164. Miriam Ticktin, *Transnational Humanitarianism*, 43 ANN. REV. OF ANTHROPOLOGY 273, 277 (2014).

165. Iris Jean-Klein & Annelise Riles, *Introducing Discipline: Anthropology and Human Rights Administrations*, 28 POL. & LEGAL ANTHROPOLOGY REV. 173, 174 (2005); Sally Engle Merry, *Relating to the Subjects of Human Rights: The Culture of Agency in Human Rights Discourse*, L. & ANTHROPOLOGY 385, 386 (2008).

considering how colonial governments are deeply implicated in the mass movements of people, and concomitantly their containment.¹⁶⁶

Colonial (mis)representations also continue to obscure Nauru's centrality in the production of new global commodity economies. From feeding into and from global food systems through phosphate to new cosmopolitan knowledge economies through refugees, but under portrayals of "guano" then "gulag" island, Nauruans shoulder the humiliation of resource curse exceptionalism and handmaiden depictions with remarkable jocularly. Yet Nauru shares *virtually* the same blueprints, builders, and conflicts as Melbourne and elsewhere, which were a natural product of the social control and differentiation of people. If, as Anna Tsing argues, it is the frictions generated by contingent universals that enable us to see commodity fetishism in action, then it is in the oppositional disruptions that sustain fictional representations where we also witness the solidification of universals in circulation.¹⁶⁷ By tracing commodities and cultural narratives through amplified and extended ecological systems, we can see the forms of rationalism and effects of universals behind interconnected processes that look to obscure similar commodity practices and facilitate contingent industry realities.

166. Miriam Ticktin, *Transnational Humanitarianism*, 43 ANN. REV. OF ANTHROPOLOGY 273, 278, 281 (2014).

167. ANNA TSING, *FRICTION: AN ETHNOGRAPHY OF GLOBAL CONNECTIONS* 1 (2005).